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Security Council

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Letter dated 9 August 2000 from the Permanent Representative of Sierra Leone to the United Nations addressed to the President of the Security Council

On the instructions of my Government, I have the honour to forward herewith a letter dated 12 June 2000, with an enclosure, from Alhaji Ahmad Tejan Kabbah, President of the Republic of Sierra Leone, on the proposed special court for Sierra Leone (see annex).

I should be grateful if the present letter and its annex could be issued as a document of the Security Council.

(*Signed*) Ibrahim M. **Kamara**
Ambassador
Permanent Representative

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Annex to the letter dated 9 August 2000 from the Permanent Representative of Sierra Leone to the United Nations addressed to the President of the Security Council

12 June 2000

On behalf of the Government and people of the Republic of Sierra Leone, I write to request you to initiate a process whereby the United Nations would resolve on the setting up of a special court for Sierra Leone. The purpose of such a court is to try and bring to credible justice those members of the Revolutionary United Front (RUF) and their accomplices responsible for committing crimes against the people of Sierra Leone and for the taking of United Nations peacekeepers as hostages. This necessitates the establishment of a strong court in order to bring and maintain peace and security in Sierra Leone and the West African subregion. For this purpose, I request assistance from the United Nations Security Council in establishing a strong and credible court that will meet the objectives of bringing justice and ensuring lasting peace. To achieve this, a quick response from the Secretary-General and the Security Council is necessary.

As you are aware, the atrocities committed by the RUF in this country for nearly 10 years in its campaign of terror have been described generally as the worst in the history of civil conflicts. In July 1999, my Government and the leadership of the RUF signed the Lomé Peace Agreement. The aim of this Agreement was to bring peace and a permanent cessation to those atrocities and the conflict. As a prize for such peace, my Government even conceded to the granting of total amnesty to the RUF leadership and its members in respect of all the acts of terrorism committed by them up to the date of the signing of that Peace Agreement.

But the RUF leadership have since reneged on that Agreement, and have resumed their atrocities, which have always had as their targets mainly civilians, including women and children. They still murder and amputate them and use the women and girls as sex slaves. Lately, they have abducted over 500 United Nations peacekeepers and seized their arms, weapons and uniforms, and even killed some of the peacekeepers. This is in spite of a provision in the Lomé Peace Agreement itself requiring both my Government and the RUF to ensure the safety of these peacekeepers. In the process, the RUF have committed crimes against Sierra Leonean and international law and it is my Government's view that the issue of individual accountability of the leadership of the RUF for such crimes should be addressed immediately and that it is only by bringing the RUF leadership and their collaborators to justice in the way now requested that peace and national reconciliation and the strengthening of democracy will be assured in Sierra Leone.

I am aware of similar efforts made by the United Nations to respond to similar crimes against humanity in Rwanda and the former Yugoslavia. I ask that similar considerations be given to this request.

I believe that crimes of the magnitude committed by the RUF in this country are of concern to all persons in the world, as they greatly diminish respect for international law and for the most basic human rights. It is my hope that the United Nations and the international community can assist the people of Sierra Leone in bringing to justice those responsible for those grave crimes.

Because of the sensitivity aroused in Sierra Leone and around the world by the activities of the RUF and their collaborators and the need to dispose of the matters to be tried at the proposed tribunal without delay, I am inviting you or the Security Council to send to Sierra Leone immediately a rapid response team of inquiry to assess the needs and concerns regarding my Government's ability to provide effective, secure, fair and credible justice.

With regard to the magnitude and extent of the crimes committed, Sierra Leone does not have the resources or expertise to conduct trials for such crimes. This is one of the consequences of the civil conflict, which has destroyed the infrastructure, including the legal and judicial infrastructure, of this country. Also, there are gaps in Sierra Leonean criminal law as it does not encompass such heinous crimes as those against humanity and some of the gross human rights abuses committed by the RUF. It is my view, therefore, that, unless a court such as that now requested is established here to administer international justice and humanitarian law, it will not be possible to do justice to the people of Sierra Leone or to the United Nations peacekeepers who fell victim to hostage-taking.

I attach hereto a suggested framework for the type of court intended (see enclosure). As you can see, the framework is meant to produce a court that will meet international standards for the trial of criminal cases while at the same time having a mandate to administer a blend of international and domestic Sierra Leonean law on Sierra Leonean soil.

(*Signed*) Alhaji Ahmad Tejan **Kabbah**
President of the Republic of Sierra Leone

Enclosure

Framework for the special court for Sierra Leone

1. Court created by the United Nations Security Council

This will be a special court for Sierra Leone created by the United Nations Security Council that will take into account the special needs and requirements of the Sierra Leone situation. It should be a court that is flexible in law and venue.

A court created under the Security Council's authority will have the advantage of strong enforcement powers that will call for cooperation from States in investigations, arrests, extradition and enforcement of sentences. It will also call for voluntary financial contributions to a trust fund that will pay for the investigations, the operations of the court and the enforcement of its sentences.

Immediately after the adoption of the resolution now requested establishing the court, the Security Council should send a rapid response team of inquiry to Freetown to explore the extent of the violations and the facilities necessary in Sierra Leone to bring credible and secure justice. This will at once send the right signals to the perpetrators of the violations that they will not continue committing atrocities with impunity, and the population of Sierra Leone too will be assured that the process to address those atrocities and to do justice to them has commenced.

2. Mandate of the court

The mandate of the court could be designed to be narrow in order to prosecute the most responsible violators and the leadership of the Revolutionary United Front. This could result in the numbers being limited to the dozens. This will also allow the court to be quick and efficient in its tasks of doing justice while at the same time breaking the command structure of the criminal organization responsible for the violence.

The mandate will need to be continuing into the immediate future to address both current and future violations until peace and security return to Sierra Leone.

3. Applicable law: a blend of international and domestic Sierra Leonean law

The court could be designed to use a blend of both international law and Sierra Leonean criminal law and procedure. Such use of law will allow for flexibility in the charging of offences that were committed during the relevant period. It will also cast a wider web to catch the leaders of the violence and atrocities committed. Some of the international crimes are certainly crimes against humanity and humanitarian law and the war crimes of attacking personnel or objects involved in humanitarian assistance or peacekeeping missions. Other crimes to be taken into account are grave criminal offences and for them the domestic law of Sierra Leone will be used in the court.

This approach roots the process in Sierra Leone and makes it uniquely Sierra Leonean.

4. Seat of the court

The court could be created in such a way as to have the ability to sit in Sierra Leone for the pre-trial and trial phases but also to move outside Sierra Leone if security becomes an issue. The language establishing the court could call for "giving preference" to the proceedings occurring in Sierra Leone. The precise location outside Sierra Leone should be determined at the outset and should be one that is secure and free of undue influence. The result is that the venue of the court should be flexible to allow it to move in and out of Sierra Leone depending on the security environment.

Assistance should be provided to strengthen the security and the infrastructure of the Sierra Leone court, detention facilities and institutions. International personnel should also be appointed to assist in providing security and training.

5. Judges

The court should be structured with a single trial chamber consisting of three judges who will hear the cases. The judges could be drawn from West Africa and possibly other parts of the world. Other judges could be appointed to hear pre-trial motions. Additional judges could be appointed at a later date to be trial judges if the caseload demands it.

6. Court of appeals

The court of appeals for Rwanda and for the former Yugoslavia based in The Hague could be used as the court of appeals for the special court for Sierra Leone.

7. Prosecuting attorney

The court could be structured so that the Attorney-General of Sierra Leone is the chief or co-chief prosecutor of the court. This structure will allow the Government of Sierra Leone to play a lead role in the prosecution while receiving international assistance and expertise. A co-prosecutor formula will also allow the international community to be represented for the international crimes committed against the peacekeepers. The two prosecutors will be in charge of a team of prosecutors and investigators (consisting of international and Sierra Leonean investigators) who will have the ability to investigate both within and outside Sierra Leone for crimes committed against Sierra Leone.

8. Defence counsel

The court should allow for qualified lawyers and defence investigators to serve and assist the accused persons. The counsel can come from any country provided that they are competent.

9. United Nations Mission in Sierra Leone

Consideration should be given to mandating support from the United Nations Mission in Sierra Leone in the areas of apprehension and security in the field.

10. Enforcement of sentences

The resolution creating the court should allow for the sentence of a convicted person to be served within Sierra Leone. To enable this to be done, consideration should be given to enhancing Sierra Leonean prisons to allow for secure incarceration within Sierra Leone.

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Security Council

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11 August 2000

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Draft resolution

The Security Council,

Recalling its resolution 1261 (1999) of 28 August 1999,

Further recalling its resolutions 1265 (1999) of 17 September 1999, 1296 (2000) of 19 April 2000, 1306 (2000) of 5 July 2000 and the statements of its President of 29 June 1998 (S/PRST/1998/18), 12 February 1999 (S/PRST/1999/6), 8 July 1999 (S/PRST/1999/21), 30 November 1999 (S/PRST/1999/34) and 20 July 2000 (S/PRST/25),

Welcoming the adoption by the General Assembly on 25 May 2000 of the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict,

Bearing in mind the purposes and principles of the Charter of the United Nations, and the primary responsibility of the Security Council for the maintenance of international peace and security,

Underlining the need for all parties concerned to comply with the provisions of the Charter of the United Nations and with the rules and principles of international law, in particular international humanitarian, human rights and refugee law, and to implement fully the relevant decisions of the Security Council, *and recalling* the relevant provisions on the protection of children contained in International Labour Organization Convention No. 182 on the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour, the Rome Statute of the International Criminal Court and the Ottawa Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on Their Destruction,

Noting the regional initiatives on war-affected children, including within the Organization for Security and Cooperation in Europe, the West African Conference on War-Affected Children held in Accra, Ghana, in April 2000, and the forthcoming International Conference on War-Affected Children to be held in Winnipeg, Canada from 10 to 17 September 2000,

Having considered the report of the Secretary-General of 19 July 2000 on the implementation of resolution 1261 (1999) on Children and Armed Conflict (S/2000/712),

1. *Reaffirms* its strong condemnation of the deliberate targeting of children in situations of armed conflict and the harmful and widespread impact of armed

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conflict on children, and the long-term consequences this has for durable peace, security and development;

2. *Emphasizes* the responsibility of all States to put an end to impunity and to prosecute those responsible for genocide, crimes against humanity and war crimes, and, in this regard, *stresses* the need to exclude these, where feasible, from amnesty provisions and relevant legislation;

3. *Urges* all parties to armed conflict to respect fully international law applicable to the rights and protection of children in armed conflict, in particular the Geneva Conventions of 1949 and the obligations applicable to them under the Additional Protocols thereto of 1977, the United Nations Convention on the Rights of the Child of 1989 and the Optional Protocol thereto of 25 May 2000, and to bear in mind the relevant provisions of the Rome Statute of the International Criminal Court;

4. *Urges* Member States in a position to do so to sign and ratify the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict;

5. *Expresses* support for the ongoing work of the Special Representative of the Secretary-General for Children and Armed Conflict, the United Nations Children's Fund, the United Nations High Commissioner for Refugees, other parts of the United Nations system and other relevant international organizations dealing with children affected by armed conflict;

6. *Urges* Member States and parties to armed conflict to provide protection and assistance to refugees and internally displaced persons, as appropriate, the vast majority of whom are women and children;

7. *Calls upon* all parties to armed conflict to ensure the full, safe and unhindered access of humanitarian personnel and the delivery of humanitarian assistance to all children affected by armed conflict;

8. *Expresses its grave concern* at the linkages between the illicit trade in natural resources and armed conflict, as well as the linkages between the illicit trafficking in small arms and light weapons and armed conflict, which can prolong armed conflict and intensify its impact on children, and in this regard *expresses* its intention to consider taking appropriate steps, in accordance with the Charter of the United Nations;

9. *Notes* that the deliberate targeting of civilian populations or other protected persons, including children, and the committing of systematic, flagrant and widespread violations of international humanitarian and human rights law, including that relating to children, in situations of armed conflict may constitute a threat to international peace and security, and in this regard *reaffirms* its readiness to consider such situations and, where necessary to adopt appropriate steps;

10. *Urges* all parties to abide by the concrete commitments they have made to the Special Representative of the Secretary-General for Children and Armed Conflict as well as relevant United Nations bodies to ensure the protection of children in situations of armed conflict;

11. *Requests* parties to armed conflict to include, where appropriate, provisions for the protection of children, including the disarmament, demobilization

and reintegration of child combatants, in peace negotiations and in peace agreements and the involvement of children, where possible, in these processes;

12. *Reaffirms* its readiness to continue to include, where appropriate, child protection advisers in future peacekeeping operations;

13. *Underlines* the importance of giving consideration to the special needs and particular vulnerabilities of girls affected by armed conflict, including, *inter alia*, those heading households, orphaned, sexually exploited and used as combatants, and *urges* that their human rights, protection and welfare be incorporated in the development of policies and programmes, including those for prevention, disarmament, demobilization and reintegration;

14. *Reiterates* the importance of ensuring that children continue to have access to basic services during the conflict and post-conflict periods, including, *inter alia*, education and health care;

15. *Indicates its willingness*, when imposing measures under Article 41 of the Charter of the United Nations, to consider assessing the potential unintended consequences of sanctions on children and to take appropriate steps to minimize such consequences;

16. *Welcomes* recent initiatives by regional and subregional organizations and arrangements for the protection of children affected by armed conflict, and *urges* them to:

(a) Consider establishing, within their secretariats, child protection units for the development and implementation of policies, activities and advocacy for the benefit of children affected by armed conflict, including children in the design and implementation of such policies and programmes where possible;

(b) Consider including child protection staff in their peace and field operations and providing training to members of their peace and field operations on the rights and protection of women and children;

(c) Undertake initiatives to curb the cross-border activities deleterious to children in times of armed conflict, such as the cross-border recruitment and abduction of children, the illicit movement of small arms and the illicit trade in natural resources;

(d) Allocate resources, as applicable, during policy and programme development for the benefit of children affected by armed conflict;

(e) Integrate a gender perspective into all policies, programmes and projects;

(f) Consider declaring regional initiatives towards full implementation of the prohibition of the use of child soldiers in violation of international law;

17. *Encourages* Member States, relevant parts of the United Nations system and regional organizations and arrangements to undertake efforts to obtain the release of children abducted during armed conflict and their family reunification;

18. *Urges* Member States and relevant parts of the United Nations system to strengthen the capacities of national institutions and local civil society for ensuring the sustainability of local initiatives for the protection of children;

19. *Calls on* Member States, relevant parts of the United Nations system, and civil society to encourage the involvement of young persons in programmes for peace consolidation and peace-building;

20. *Encourages* the Secretary-General to continue to include in his written reports to the Council on matters of which the Council is seized, as appropriate, observations relating to the protection of children in armed conflict;

21. *Requests* the Secretary-General to submit a report to the Security Council on the implementation of this resolution and of resolution 1261 (1999) by 31 July 2001;

22. *Decides* to remain actively seized of this matter.